

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED

May 15, 2012

In the Matter of K. MACDONALD, Minor.

No. 305800

Oakland Circuit Court

Family Division

LC No. 2009-763947-NA

Before: K. F. KELLY, P.J., and WILDER and BOONSTRA, JJ.

PER CURIAM.

Respondent appeals as of right from an order terminating her parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(i) (conditions leading to adjudication continue to exist), (g) (failure to provide proper care and custody), and (j) (child would likely be harmed if returned to the parent). We affirm.

I. BASIC FACTS AND PROCEDURAL HISTORY

On November 4, 2009, respondent pleaded “responsible” to the initial petition, which alleged that respondent had a previous history with Children’s Protective Services (CPS) and an ongoing substance abuse problem, including a prior criminal case for possession of marijuana for which she was on probation. The minor child was born testing positive for marijuana. Respondent, who was 19 years old, was pregnant with her third child¹ and had recently tested positive for marijuana. Respondent was unemployed and living with the child’s father, 17-year-old Douglas Lunsford,² in the home of Lunsford’s ex-girlfriend, along with numerous other adults and children. Respondent’s oldest child was living with his father.

At a December 4, 2009, dispositional hearing, respondent was presented with a parent-agency agreement (PAA). Respondent was expected to keep weekly contact with the foster care worker, maintain emotional stability, participate in mental health services, sign a release of information form, obtain a legal source of income, establish suitable and stable housing, and permit unannounced and announced home visits. Respondent was also to continue weekly

¹ The child was born in January 2010 and was made a temporary ward in a neighboring county.

² Lunsford had an older child who was also included in the petition for temporary custody.

supervised visitation at the agency, participate in random drug screens through JAMS, attend counseling, complete parenting classes, and a PACE assessment. Respondent was highly motivated and because of her significant progress, she was granted unsupervised visitation. The child was returned to her care with in-home services.

On September 10, 2010, less than three weeks after the child was returned to her care, an emergency removal hearing was held based on two separate instances involving Lunsford. The first involved a shotgun accidentally discharging in the trailer respondent and Lunsford shared. The bullet went through the trailer walls, and into the neighboring trailer. In a second incident, Lunsford engaged in a violent altercation, consumed alcohol, and was arrested for disorderly conduct. Firearms were once again involved. There were also allegations that respondent and Lunsford allowed the paternal grandmother to live in the trailer, which they had been admonished not to do, given the grandmother's prior CPS involvement. It also came to light that respondent and Lunsford had been evicted from their trailer due to neighbors' complaints about their unruly behavior. The trial court found that respondent and Lunsford exercised poor judgment and placed the child in harm's way. The child was removed, but the goal remained reunification.

After the second removal, respondent's participation in the PAA was greatly reduced and a termination petition was filed due to her non-compliance. At the termination hearing, foster care case manager Kenesia Cheatham testified that respondent and Lunsford had been evicted twice during the pendency of the case and that respondent was not in compliance with her PAA. Respondent completed the "first round" of individual counseling, but needed ongoing counseling for her depression. Counseling was terminated in August 2010, due to respondent's failure to attend. Another referral was made, and respondent was attending counseling, albeit somewhat sporadically, when the supplemental petition was filed. Visits also became sporadic after the child was removed for the second time. Although respondent reported that transportation was an ongoing problem, the agency had provided her with bus passes. At the beginning of the case, respondent consistently took the drug screens and tested negative, but respondent became noncompliant. Respondent's last drop was in October 2010. Cheatham had clearly informed respondent of what she needed to do regarding the drug screens, outlining the policy at JAMS. Respondent completed parenting classes, but Cheatham opined that she did not benefit from the classes based on respondent's sporadic and inconsistent parenting time, and her failure to address her substance abuse issues.

Cheatham recommended termination of respondent's parental rights. She testified that while respondent had always been appropriate with the child and the child loved being with respondent, the child needed permanency. Even though respondent was given significant time to rectify the barriers that brought the child into care, she had not done so. Cheatham observed a significant change in respondent's participation and behavior since the child was removed in September following the incidents that occurred in August 2010.

The court found clear and convincing evidence to terminate respondent's parental rights pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). The hearing continued to determine the child's best interests. Clinical psychologist Catherine Conti opined that, since respondent had not been consistently participating in drug screens, there was still a concern that she was using. Respondent appeared to be "experiencing considerable emotional disturbance." Based on her

interview and testing, Conti had “serious concerns” that respondent would not be “able to fulfill her parental role.” The main problems were unstable housing, lack of employment, and the question of illegal drug use. Respondent only accepted partial responsibility for the fact that the child was in foster care.

Foster care worker Cheatham testified that respondent had not found adequate housing. She and Lunsford were residing with unnamed friends. Respondent had not provided any documentation of employment or any source of legal income. Cheatham did not know whether respondent was still participating in counseling. Respondent had not taken any drug screens since October 2010. A hair follicle test taken in March 2011, which had been ordered by the court that had jurisdiction over her youngest child, was positive for marijuana. Respondent also completed a screen on May 5, 2011, through JAMS, which was also positive for marijuana. Respondent attended four of seven visits with the child. There was evidence of a bond between respondent and the child. Respondent parented appropriately and Cheatham believed that respondent cared about the child. Nevertheless, Cheatham opined that termination of respondent’s parental rights would be in the child’s best interests.

Care House volunteer Sherry Diez testified that she visited with the child during family time and interacted with respondent and the child. Diez offered contact information to respondent and told her to contact her for any help if she needed it. Diez informed respondent of the different programs she could utilize, including help with housing and jobs. Respondent never reached out for help. Diez observed that the child was more excited to greet the foster mom after a visit than respondent; however, the visits between respondent and the child were appropriate.

Respondent testified that the drug screens were false positives and that she was absolutely not using marijuana. Respondent believed that the child was happy to see her and that the child should have a chance to be with her biological mother.

Respondent admitted that after the child was removed a second time, “everything went downhill” and she stopped doing the drug screens. When asked why, respondent stated: “No way. I don’t know where to go ‘cause I’m bouncing from house to house. I don’t know all the locations of JAMS, and I honestly don’t always get a call back from Ms. Cheatham.” She claimed that JAMS was getting their colors confused. She knew it “looks bad, but something that you’ve done how many years ago doesn’t really affect the way that you raise your kids now.” She had only smoked marijuana sporadically, but it was in her system when she got pregnant with the child.

Respondent further testified that she and Lunsford were evicted from their home in May. They were now living with his aunt until they could find a place. She did not pay rent. Respondent was going to look into renting a trailer in the same park with an aunt. She had been working for Avon for two weeks but had not received a paycheck yet because “[w]e had a little conflict.” If the child was returned, she would find a way to take care of her.

Respondent’s mother and several of Lunsford’s family members testified on respondent’s behalf, indicating that she was an appropriate and attentive mother.

In its findings of fact, the court noted that respondent had made excellent progress in the beginning, but then “it all came tumbling down.” The court continued:

. . . . I think [respondent] would have a pretty good argument that that removal was based on the . . . behavior of [her fiancée] having guns in the house, shooting off guns, starting fights, all those different things, but the difficulty is that she’s still with . . . [her fiancée]. So she obviously doesn’t think that he is a negative influence.

She also has no source of income and no housing, has been evicted, and to this day is working for Avon, which . . . I guess is a good start, but maybe too little too late. She doesn’t have housing. She doesn’t have a way to support her child. I realize [she is a young mother] but the hearing isn’t about what’s in the mother’s best interest. It’s what’s in the best interest of these children.

And it’s one thing to live in poverty, but it’s another thing to be homeless or to live with a drug addicted mother. Because although [respondent] says she went into rehab for a month in 2008, it’s clear from the testimony that she has used since then. In fact, she has used during pregnancies, which is much less excusable.

* * *

. . . . [W]hen [her fiancée] fired off a gun when the children had been home a week or two and she’s still with him now, she hasn’t made the right choices. . . . She’s . . . never had any independent income. I know she’s very young, but she has no way to support the children and no housing.

I guess the biggest difficulty — she did complete parenting classes. But this incident was after parenting classes were completed. She — she’s missed a number of visits

She’s also had no . . . screens since May. This is the testimony when the best interest hearing started. Her follicle test in March 2011 that was positive for marijuana, a positive drop in May. Her last screen before that was October 1st of 2010.

* * *

[Respondent is not] any further along than [she was] when this case started two years ago. [Respondent] had a history of complying with the Parent Agency Agreement, but . . . then everything went in the dumper. But [respondent] should be saying to herself, . . . [my fiancée] might be working some, but he’s been in jail different times, causing me not to have visitation. Before that, he’s shooting off guns, and I lose my kids. Maybe I need to choose my kids over him, pull myself up by the bootstraps, try to find some subsidized housing, get a job, and show the Court that I’m choosing my kids over [him]. And that I’m . . . propping myself up rather than waiting for [him] to get his act together.

But I'm not going to expect these kids . . . to go and live in poverty while [respondent] smokes pot and . . . bounces from house to house. That is not in their best interest.

The trial court concluded that termination of respondent's parental rights was in the child's best interest and terminated respondent's parental rights. Respondent now appeals as of right.

II. ANALYSIS

Respondent argues that the trial court erred in terminating her parental rights. We disagree.

To terminate parental rights, the court must first find that at least one of the statutory grounds set forth in MCL 712A.19b(3) was proven by clear and convincing evidence. MCL 712A.19b(3); *In re JK*, 468 Mich 202, 210; 661 NW2d 216 (2003); *In re Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000). Once a statutory ground for termination of parental rights is established, the court must terminate if it finds that termination of parental rights is in the child's best interests. MCL 712A.19b(5). This Court reviews a trial court's finding that a ground for termination was established by clear and convincing evidence for clear error. MCR 3.977(K); *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. *Mason*, 486 Mich at 152. Regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appear before it. MCR 2.613(C); MCR 3.902(A); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

Respondent's parental rights were terminated pursuant to MCL 712A.19b(3)(c)(i), (g), and (j), which provide:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

* * *

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

When the child was initially removed, respondent worked hard to comply with everything that was asked of her. She did so well that the child was returned to the home within a relatively short time. However, through the actions and poor judgment of Lunsford, the child was removed after two weeks. At that time, respondent was at a crossroads. In order to get the child back, respondent needed to separate herself from Lunsford and become an independent person who could provide the proper care or custody for her child. Instead, she chose to stay with Lunsford and to rely on him and his family for all of her basic needs.

At the time of the termination hearing, respondent was living rent free with Lunsford in the home of his aunt and uncle. There were six people in a three-bedroom trailer, with no room for the minor child. Respondent had been employed with Avon for two weeks and had not yet received a paycheck. Respondent had not complied with urine screens for eight months. Then a hair follicle test in March 2011 and a urine screen in May 2011 were both positive for marijuana. Thus, it was reasonable to conclude that respondent was still using marijuana and still had a substance abuse problem, despite her claims to the contrary. After 21 months, it was clear that the conditions leading to adjudication continued to exist with no reasonable likelihood that the conditions would be rectified within a reasonable time, considering the child's age.

Moreover, respondent continued her relationship with Lunsford, who consistently used poor judgment with respect to the children in his care. On one occasion, he brought a shotgun into the home, which discharged accidentally and went through their trailer walls into the neighboring trailer. On another occasion, he engaged in violent altercations, consumed alcohol, and was arrested for disorderly conduct. At the time of the best interests hearing, it was discovered that a third incident occurred in which Lunsford allegedly assaulted another individual. Lunsford spent time in jail while the case was pending. He did not even attend the termination hearing. Petitioner intimated that respondent had made himself scarce to as to avoid numerous arrest warrants. Lunsford ultimately lost his parental rights to his two children. By continuing her relationship with Lunsford, respondent provided clear and convincing evidence that the minor child would be at risk of harm if placed with her. Her continued use of illegal substances also put her child at risk.

Finally, the trial court did not clearly err in finding that termination of respondent's parental rights was in the child's best interests. The trial court accepted the evidence that there was a bond between respondent and her child. However, respondent had a history of substance abuse, had stopped complying with drug screens, and her hair follicle test and most recent screen tested positive for marijuana. Her testimony that the tests were incorrect was not credible. Lunsford's actions resulted in the re-removal of the minor child from respondent's home. His parental rights had already been terminated. The trial court would never place the child in a home where he resided. Respondent's only employment was two weeks of selling Avon products, and she had not received a paycheck. Her attendance at visitations had been sporadic, and several times she did not call to cancel, leaving the foster parents and the child waiting in

vain at the agency. The foster parent reported that the child did not ask about respondent between visits. After 21 months of services, the child needed permanency, and it was clear that respondent would not be able to provide such permanency within a reasonable time.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Kurtis T. Wilder
/s/ Mark T. Boonstra